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AIR LINE PILOTS ASSOCIATION, INTERNATIONAL

1625 MASSACHUSETTS AVENUE, N.W. □ WASHINGTON D.C. 20036 □ 202-797-4097
FAX 202-797-4014

September 3, 2008

Via Facsimile (202-692-5085) and U.S. Mail

Mary Johnson, General Counsel
National Mediation Board
1301 K Street NW, Suite 250 East
Washington, DC 20005-7011

Re: ALPA's Comments On Proposed Representation Manual Changes

Dear Ms. Johnson,

The undersigned respond on behalf of the Air Line Pilots Association (ALPA) to the Board's request for comments about its revisions to various sections of the Board's Representation Manual as described in its July 15, 2008 Notice. ALPA is aware of and concurs with the position of the AFL-CIO's Transportation Trades Department regarding the proposed revisions. In addition, ALPA addresses below specific concerns about two of the proposed revisions to the Representation Manual that would represent sharp departures from the Board's settled practices and would not, in our view, further the Board's statutory role as the neutral finder-of-fact in representation disputes.

Proposed Rule 13.304-2(5)

ALPA finds troubling on several levels the Board's proposal to change the longstanding Representation Manual provisions dealing with Void Ballots in proposed Section 13-304-2(5). This new provision would, for the first time, put the Board in the position of divining the intent of the voter by requiring a determination as to whether an otherwise facially valid vote should not be counted because the representative selected was not actually intended by the voter to serve as a true representative in cases where the vote was for "a current political candidate or other widely known individual"

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This proposed rule is unclear on its face, and would sow unneeded confusion in the process. Voters or organizations may be unclear, for example, as to what the terms "current political candidate or other widely known individual" mean and how they would be applied by the Board. For example, is the rule talking about public political candidates for federal, state or local elected office, and if so, which ones, or is the rule talking about union political leaders? This standard is far too vague and would provide the Board too much discretion to negate otherwise clearly valid votes for representation.

The substantive intent of the rule change is even more troubling, however, than its wording. The rule would mark a significant departure for the Board, which has for decades been careful not to engage in the subjective task of divining voter intent concerning the bona fides of a chosen representative. Up to this point, the Board has appropriately determined only the facts of whether the voter is eligible and has in fact clearly expressed a desire for some form of representation. Indeed, in every election, the parties know well and ensure that voters well understand that any valid ballot cast is a vote for representation. Moreover, when an employee writes in the name of a "current political candidate or other widely known individual," that employee may well be conveying that any representative is better than no representative. There is no need to make the fact-finding role of the Board any more subjective than is necessary to determine whether an eligible voter has expressed a desire for some form of representation. In any case, the statute specifically allows for employees to vote for any "individuals or organizations" of their choice, 45 U.S.C. § 152, Ninth, including any "person not in the employ of the carrier," 45 U.S.C. § 152, Third, and, to that extent, the proposal deprives employees of their clear statutory right to freedom of choice to select any representative of their choosing.

In short, the confusing and subjective standards introduced by this rule change are unnecessary, contrary to the specific mandates of the RLA, and will lead to unnecessary and avoidable questions concerning the Board's neutrality in the election process. ALPA believes that the Board's existing rules and practice in this area are sound, well understood, and have served the Board and the parties well for many years. They should not be changed.

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Proposed Rule 19.701

The first part of the proposed change to the Board's settled merger procedures also raises concerns for ALPA. New Section 19.701 would apply only in the circumstance "[w]here there is a certified representative on one of the affected carriers but no certified representative on the other[s]." It would change the Board's standards in such a situation by permitting the Board to "exercise its discretion and extend the certification only where there is more than a substantial majority, as determined by the Board." Parties already well understand how the Board has applied its longstanding comparability analysis, but now will not be sure about the specifics of the new "substantial majority" standard.

ALPA understands that two of the Board members have expressed the view that this modification is not intended to work a substantive change in relation to its settled "comparability" analysis concerning the situations in which a certification can be extended without an election. In that case, the rule change is completely unnecessary and can only result in confusion and suspicion.

Under the proposed Section 19.701, the new threshold for extending certification is "more than a substantial majority," and the Board determines what this percentage is, apparently on a case-by-case basis. This is, at best, an ambiguous, unknown standard with which parties will have no experience as opposed to the long-settled and well understood comparability analysis that has applied heretofore. The new standard can be read as granting the Board unprecedented discretion to extend or deny certification to unions involved in mergers.

The proposed change will also raise needless suspicions about the Board's motives, as it would apply only to circumstances where there is a certified representative on one side but not on the other. It could be inferred from the targeting of this specific representational context that the Board is simply changing the rules to make it harder for an existing union to maintain representation or claim additional employees in a merger. This suspicion is reinforced by the fact that this targeted rule change is proposed in the midst of the ongoing Delta-Northwest merger. ALPA is aware that similar concerns have been expressed to the Board by Senator Kennedy and Congressman Oberstar and Miller, with which it agrees.

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ALPA urges the Board not to adopt this rule change. Further, ALPA agrees with the other organizations' view that if the Board intends to pursue this significant rule change involving merger policy, it should first hold a full public hearing so the views of all affected parties may be fully heard and taken into account.

Sincerely,

A handwritten signature in black ink, reading "Marcus C. Migliore". The signature is fluid and cursive, with the first name "Marcus" and last name "Migliore" clearly legible.

Arthur Luby

Assistant Director, Representation

Marcus Migliore

Managing Attorney, Legal Department

cc: Captain John Prater
Larry Willis, TTD, AFL-CIO

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FACSIMILE TRANSMISSION FORM

DATE: September 3, 2008

TO: Mary Johnson, General Counsel
National Mediation Board
202-692-5085

FROM: Marcus Migliore
Legal Department
AIR LINE PILOTS ASSOCIATION
1625 Massachusetts Avenue NW
Washington DC 20036
Telephone: 202-797-4054
Facsimile: 202-797-4014

We are transmitting 5 page(s) including this cover sheet.

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